

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

(Carrier Air Cond. Co.)

Collierville site

ACO 1 - 9/29/89

#19569

IN THE MATTER OF:

COLLIERVILLE SITE,
COLLIERVILLE, SHELBY COUNTY
TENNESSEE

CARRIER CORPORATION
Respondent

)
)
) Proceeding under Section 104,
) 106 and 122(d)(3) of the
) Comprehensive Environmental
) Response, Compensation and
) Liability Act of 1980, as
) amended, 42 U.S.C. §§ 9604,
) 9606, and 9622(d)(3)

) EPA Docket No:

ADMINISTRATIVE ORDER

I. JURISDICTION

This Administrative Order by Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with the Carrier Corporation (Respondent) pursuant to the authority vested in the President of the United States by Section 104, Section 106(a), and Section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9604, 9606(a), and 9622(d), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), P.L. 99-499. This Consent Order is issued under authority delegated to the Administrator of the Environmental Protection Agency (EPA) by Exec. Order No. 12580, (Jan. 23, 1987), 52 Fed. Reg. 2923 (Jan. 29, 1987), further delegated to the Regional Administrator of Region IV EPA, and redelegated to the Director, Waste Management Division.

Respondent agrees to undertake all actions required of it by the terms and conditions of this Consent Order for the conduct and implementation of a Remedial Investigation and Feasibility Study at the Collierville site in Collierville, Shelby County, Tennessee (the Site) and any additional work agreed to pursuant to Section IV below.

Solely for the purposes of this Consent Order, the Respondent consents to and agrees not to contest EPA jurisdiction to issue this Consent Order. Respondent consents to jurisdiction for purposes of entry and enforcement of this Consent Order by EPA, provided however, the Respondent does not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact, and conclusions of law made by EPA in this

Consent Order and specifically reserves the right to contest any such determinations, allegations, findings, and conclusions in any proceeding regarding the Site other than actions brought by EPA to enforce this Consent Order.

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (A) to determine fully the nature and extent of any threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site (Remedial Investigation); and (B) to evaluate alternatives for the appropriate extent of any remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site (Feasibility Study).

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and will be subject to the express EPA approvals as set forth below.

II. FINDINGS OF FACT

For the purposes of this Consent Order, EPA finds that:

- A. Respondent is Carrier Corporation, a Delaware Corporation with its principal place of business in Syracuse, New York.
- B. The Respondent is the owner and operator of the Collierville Site ("the Site") in Collierville, Tennessee.
- C. The Site was previously owned by the City of Collierville and was leased to the Respondent (or its corporate predecessors) from 1967 until early 1988. Respondent has owned the Site since early 1988.
- D. The Respondent has operated a facility for the manufacture of hot water heaters, air conditioners, and heat pumps ("the facility") at the Site from 1967 until the present.
- E. Trichloroethylene ("TCE") has been released into the environment at the Site as the result of a sudden malfunction of a degreasing machine on June 20 and 21, 1979 and as a result of the rupture of an underground pipe in January 1985.

- F. Prior to 1980, Respondent operated an unlined lagoon, approximately 214 cubic feet in volume, for the purpose of containing clarifier sludges. TCE has been detected in the lagoon area. The material in the lagoon and some contaminated soil was removed prior to November 1980, and the lagoon area was filled with clean fill.
- G. TCE has been detected in soil samples taken from the Site. TCE has also been detected in groundwater monitoring wells located on site.
- H. TCE has been detected in two City of Collierville municipal wells located 2000 feet northwest of the plant at concentrations in excess of the National Primary Drinking Water Regulation in the raw water, although finished water still complies with the National Primary Drinking Water Regulation.
- I. Respondent represents that it has expended substantial sums conducting soil and groundwater investigations and remedial work at the Site.

III. CONCLUSIONS OF LAW

EPA concludes that :

- A. The Site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Respondent is a person as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
- C. Trichloroethylene is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- D. Hazardous substances, as defined in Section 101(14) of CERCLA, have entered the environment at the Site through spills, leaks, and discharges, and are currently present there.
- E. The past, present or potential migration of hazardous substances from the Site constitute an actual or threatened release as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

IV. DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law and the entire record of this proceeding, the Director of the Waste Management Division has determined that:

- A. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.
- B. The actions required in this Consent Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300 et seq.
- C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1), EPA has determined that the Respondent is qualified to conduct the RI/FS and, if the RI/FS is conducted in accordance with this Consent Order, will properly and promptly do so.

V. ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, Respondent is hereby ordered and directed to undertake the following activities, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance, including but not limited to, the "Interim Final Guidance for conducting RI/FS under CERCLA" (OWSER Directive 9355.3-01). In consideration of the work already performed at the Site by Respondent, EPA is reviewing a Remedial Investigation and Feasibility Study (RI/FS) Work Plan, a field sampling and analysis plan (FSP), a quality assurance project plan (QAPP), and a site health and safety plan prior to the effective date of this Consent Order. The Work Plan shall include a site background summary and a detailed description of the tasks to be conducted during the RI/FS. It shall also include the methodology, information to be developed and deliverables for the activities to be performed during the RI/FS, as well as their corresponding schedules of completion. The RI/FS work plan shall include a schedule for deliverables as well as a schedule for completing the RI/FS. The FSP shall define in detail the sampling and data gathering activities, objectives, and information to be gathered, with locations and frequencies, on the project. The QAPP shall describe the project objectives and organization, functional activities, quality assurance and quality control protocols, sampling procedures, sample custody, analytical procedures and detection levels, and data reduction, validation, and reporting. The health and safety plan shall conform to the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910.

- A. The Respondent shall implement the RI/FS Work Plan when it has been approved by EPA, together with any modifications to the work plan made pursuant to Section X of this Order (Work Plan). That Work Plan shall be attached to and incorporated into this Consent Order as Attachment 1. This RI/FS work will be conducted in accordance with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- B. For the duration of this Order, by the tenth of each month, Respondent shall make a written progress report to EPA. Each monthly report shall:
- 1) describe steps taken in the preceding month to perform the work described in the Work Plan;
 - 2) transmit final sampling results and other final data received by Respondent during the preceding month; and
 - 3) identify steps to be taken under the Work Plan during the current month.
- C. Respondent shall promptly notify EPA of the beginning and completion of field activities provided in the the Work Plan.
- D. Remedial investigation. Within the period set out in the Work Plan, Respondent shall submit a draft Remedial Investigation (RI) report which includes a summary of results of the field activities to characterize the site and nature and extent of contamination, the fate and transport of contaminants, and results of the baseline risk assessment. If EPA disapproves of the RI report in whole or in part, Respondent shall amend and submit to EPA a revised RI report within forty-five (45) days of receipt of EPA's written notification of disapproval.
- E. Feasibility Study Report Within the time period set forth in the Work Plan, Respondent shall submit a draft FS report. (Respondent and its contractors shall also conduct a presentation to EPA at which they shall present and discuss findings of the remedial investigation, remedial action objectives, alternatives evaluated in the FS, and the comparative analysis.) The Report, as amended by EPA, and the administrative record shall provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a) by EPA and shall document the development and analysis of remedial alternatives. If EPA disapproves of the draft FS report in whole or in part, Respondent shall amend and submit to EPA a revised FS report within forty-five (45) days of receiving EPA's written notification of disapproval.

- F. In the event EPA disapproves any preliminary or final report, EPA retains the right to request the amendment of such reports, to perform additional studies, and to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take other action, including but not limited to enforcement action to recover its costs pursuant to its authority under CERCLA.
- G. Respondent shall assist EPA in preparing for presentations at meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues.
- H. EPA reserves the right to comment on all deliverables. If EPA issues a notification of disapproval for a deliverable, EPA shall specify the deficiencies in writing. When directed by EPA to do so, Respondent shall incorporate and integrate all information and comments supplied by EPA into the final RI/FS report.
- I. If EPA amends or disapproves any report, plan, or other submission under this section and the Respondent disagrees with the amendment or disapproval, Respondent shall have the right to note its disagreement with EPA in writing.
- J. In the event that Respondent amends and revises a report upon receipt of EPA disapproval, if there is subsequent EPA disapproval of the revised report, EPA retains the right to: allow Respondent an additional opportunity to submit an acceptable report; or in lieu of Respondent, perform its own additional studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent for its costs; or seek any other appropriate relief.
- K. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the final RI/FS report.
- L. Failure of EPA to expressly approve or disapprove of Respondent's submissions within the specified time period(s) shall not be construed as approval by EPA.
- M. All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or geologist with expertise in hazardous waste site cleanup and hydrogeological

investigations. Within twenty-one (21) days of the effective date of this Consent Order, the Respondent shall notify EPA in writing regarding the name, title and qualifications of such engineer and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. EPA reserves the right to disapprove for cause any engineer, geologist, contractor and/or subcontractor selected for the RI/FS and shall specify the reason for such disapproval. In the event of such disapproval, Respondent shall notify EPA within 10 days of an alternate selection.

- N. EPA may determine that tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of an RI/FS in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. This Consent Order may be amended to include such additional work by mutual agreement of EPA and Respondent. Such additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA. In the event the parties cannot reach agreement as to modification of this Order, EPA shall have the right to perform additional work as provided in Paragraph XIX of this Order.

VI. QUALITY ASSURANCE

For data collected after the date of this Order, Respondent shall use appropriate quality assurance, quality control, and chain of custody procedures as set out in the QAPP. Respondent shall consult with EPA in planning for, and prior to, all future sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondent shall:

- A. Ensure that EPA personnel or EPA authorized representatives are allowed access to the laboratory(ies) and personnel utilized by Respondent for analyses.
- B. Ensure that the laboratory(ies) utilized by Respondent for analysis after the date of this Order performs such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA as set out in the QAPP

- C. Ensure that the laboratory(ies) utilized by Respondent for analyses after the date of this Order participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory will perform analysis of samples provided by EPA to demonstrate the quality of each laboratory's analytical data.

VII. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. Respondent shall make the results of all sampling or tests or other data generated by Respondent, or on Respondent's behalf, with respect to the implementation of this Consent Order, available to EPA and will submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to Respondent the results of sampling or tests or other data similarly generated by EPA.
- B. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by Respondent pursuant to the implementation of this Consent Order. Respondent shall notify EPA not less than eight (8) days in advance of any sample collection activity.
- C. EPA or any EPA authorized representative will have authority which includes, but is not limited to, authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; authority to review the Respondent's progress in carrying out the terms of this Consent Order; authority to conduct such tests as EPA or the EPA Project Coordinator deems necessary; authority to use a camera, sound recording, or other documentary type equipment; and authority to verify the data submitted to EPA by Respondent.
- D. Respondent shall permit such person(s) to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph will comply with all approved health and safety plans.
- E. Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information

requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.

- F. Respondent does not hereby waive the attorney-client or attorney work product privileges. Respondent shall not invoke such privileges to withhold data gathered pursuant to this Consent Order.
- G. To the extent that the RI/FS involves activities that must be carried out on properties (other than the Facility) not owned by Respondent, Respondent shall use its best efforts to obtain access agreements from the property owners within thirty (30) calendar days of the identification of the access need. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and EPA and its authorized representatives to have access to such property. In the event that such access agreements are not obtained within the time set forth in the Paragraph, Respondent shall notify EPA within five (5) working days of the receipt of denial of its request for off-site access. Respondent shall indicate both the lack of agreements and the level of effort made to obtain such access agreements. In such event, and if either party deems such agreement essential to the satisfaction of the requirements of this Order, EPA may, in its discretion, take such action as it deems appropriate to secure such access agreement. If Respondent is unable to secure an access agreement in accordance with this paragraph, such event will constitute a Force Majeure with respect to the activities for which the property in question is necessary. In no event shall this paragraph apply to the Facility.
- H. In the event EPA or its authorized representative deem it necessary under this Order to take photographs at the facility, two day's advance notice shall be given Respondent for photographs taken outdoors at the facility, and ten day's advance notice shall be given for any photographs taken inside buildings at the facility. The purpose of such advance notice is to provide Respondent time to assure that:

1. such photographic work does not violate any applicable national security requirements of any government contracts under which it may then be working;
2. appropriate arrangements are made with EPA to protect any confidential commercial information disclosed in such photographs. Respondent believes that certain aspects of its assembly process may be unique in the industry, and regards such information as proprietary; and
3. appropriate escorts are available for such photographic work.

VIII. RECORD PRESERVATION

EPA and Respondent shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys which relate to this Order, despite any document retention policy to the contrary. After this six year period, Respondent shall notify EPA within ninety (90) days prior to the destruction of any such documents. Upon request by EPA, Respondent shall make available to EPA such records or copies of any such records.

IX. DISPUTE RESOLUTION

- A. If the Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondent will notify EPA in writing of its objections within ten (10) days from the receipt of the decision. EPA and the Respondent then have an additional thirty (30) days from the receipt by EPA of the notification of objection to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each Party, and incorporated into the Order.
- B. If the parties are unable to reach agreement within this thirty (30) day period, EPA will provide a written statement of its decision and the reasons therefore to the Respondent. Such decision by EPA shall be made generally in accordance with the provisions of this Order, in particular in accordance with the reservation of rights provisions of this Order.

X. MODIFICATION OF THE WORK PLAN

In the event of unanticipated or changed circumstances at the site, Respondent shall promptly notify the EPA Project Coordinator by telephone, and confirm in writing as soon as reasonably practicable, of discovery of the new or changed circumstances. In the event that EPA determines that the new or changed circumstances warrant changes in the work plan, EPA may request a modification to the work plan as provided in Paragraph XX of this Order.

XI. OTHER APPLICABLE LAWS

Respondent shall comply with OSHA requirements and shall perform all work safely. Under Section 121(e) of CERCLA, no local, state or federal permit shall be required for the portion of any removal action, including studies, or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with that provision of the statute. This Consent Order does not modify CERCLA §121(d)(3) or any regulations thereunder.

**XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT
RECORD OF DECISION, ADMINISTRATIVE RECORD**

- A. EPA retains the responsibility for the preparation and release to the public of the RI/FS report, proposed plan and record of decision in accordance with CERCLA and the NCP.
- B. EPA shall notify the Respondent which preferred alternative and final plan are selected for the Site.
- C. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent must submit to EPA such documents developed during the course of or prior to the RI/FS upon which selection of the response action may be based.

XIII. DESIGNATED PROJECT COORDINATORS

- A. On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA and Respondent may reasonably designate. Communications include all documents, reports, approvals and other correspondence submitted under this Consent Order.

- B. All documents, including reports, approvals, and other correspondence, which are required to be submitted pursuant to this Consent Order, shall be sent by certified mail or overnight express to the following addresses or to such other addresses as the EPA may hereafter designate in writing:

1. Documents or correspondence to EPA shall be sent (in 7 copies - 6 bound, 1 unbound) to:

Ms. Felicia Barnett
Remedial Project Manager
EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

2. Documents or correspondence to the Respondent shall be sent to:

Mr. Jess Walrath, Jr.
Manager, Environmental Assurance
Carrier Corporation
P.O. Box 4808
Syracuse, N.Y. 13221

- C. EPA and Respondent each have the right to change their respective Project Coordinator. If possible, the other party must be notified in writing at least ten (10) days prior to the change.
- D. EPA's Project Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions (or portions of response action) as set forth in 40 C.F.R. § 300.65(b). The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.
- E. On or before the effective date of this Consent Order, EPA shall arrange for a qualified person to assist it in overseeing and reviewing the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

XIV. FORCE MAJEURE

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondent shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondent which could not

have been overcome by due diligence. The Respondent shall promptly notify EPA's Remedial Project Manager orally and shall, within seven (7) days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. The Respondent and EPA shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph shall constitute a waiver of the right to invoke this Section for the particular circumstances for which notice was inadequate. Increased cost of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

XV. RELATIONSHIP BETWEEN THE UNITED STATES AND RESPONDENT

- A. The Respondent agrees to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of any acts or omissions of Respondent, its employees, agents, servants, trustees, successors, or assigns, or of any other persons acting on behalf of Respondent, including but not limited to firms, corporations, contractors, or consultants engaged in carrying out activities pursuant to this Consent Order. EPA is not a party to any contract entered into by the Respondent or its representatives at or relating to the Site.
- B. This Consent Order shall apply to and be binding on the parties to this Consent Order, their agents, employees, successors, assigns, and contractors.
- C. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.
- D. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondent, agents, contractors, lessees, successors, or assigns, for any conditions or claims arising as a result of past operations or ownership of the site.

XVI. REIMBURSEMENT OF COSTS

Within a reasonable time after the end of the fiscal year, EPA shall submit to Respondent an accounting of any oversight costs incurred by EPA or its contractors in the preceding year. This accounting shall include copies of contractor invoices for any contractor costs included in that accounting. EPA may recover all EPA costs related to this site incurred prior to the effective date of this Order under this provision as if those costs were oversight costs. For the purposes of this Order, oversight costs shall also include EPA contractor costs incurred in connection with the review of any draft and final work plans, draft and final QAPP, draft and final health and safety plans, and draft and final sampling plans incurred prior to the effective date of this Order.

Respondent shall pay undisputed items of cost within 45 days of receipt of EPA's accounting and shall either request specific additional information as to disputed cost items within 45 days, or indicate in writing its legal or factual basis for disputing such items. Disputed costs shall be subject to the dispute resolution clause. At the conclusion of the dispute resolution process, costs which EPA determines are properly incurred shall become due and payable within 30 days of that determination. Costs remaining unpaid after that date shall bear interest at the statutory rate fixed by CERCLA.

Checks for costs should specifically reference the identity of the Site and should be sent to:

United States Environmental Protection Agency
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

Attn: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA/SARA at this Site.

XVII. OTHER CLAIMS

Nothing in this Consent Order will constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

In entering into this Consent Order, the Respondent waives any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Order. Respondent does not by its entry in this Order waive any claim for reimbursement of these costs pursuant to any applicable policy of insurance, indemnity agreement, or other arrangement, however denominated, for reimbursement of such costs from any party other than the United States or the Hazardous Substances Superfund.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

Except for delays from events which constitute a force majeure, the Respondent will be subject to the imposition of stipulated penalties for failure to submit the draft or final RI Report, or draft or final FS Report by the deadlines set forth in the approved RI/FS work plan, as such deadlines may subsequently be modified pursuant to this Order. These stipulated penalties are \$1000 per day for the first 10 business days, \$2000 per day for the next 20 business days, and \$3000 per day for each business day beyond 30 business days. For the purpose of this provision, the submission date of documents is the date they are mailed or placed in the hands of an express service. Payment for any stipulated penalties accrued pursuant to this Consent Order will be sent to:

United States Environmental Protection Agency
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

Attn: Collection Officer for Superfund

within thirty (30) days of receipt by Respondent of EPA

accounting of the penalties. Payment, in the form of a check, will be sent by certified mail. A copy of the Respondent's transmittal letter referencing the Site will be sent simultaneously to the EPA Project Coordinator. EPA reserves the right to waive such penalties.

XIX. RESERVATION OF RIGHTS

EPA reserves the right to take any other enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, statutory penalties as authorized by §§ 106 and 109 of CERCLA, and punitive damages for any violation of this Consent Order or any other violation of law.

Except as otherwise provided herein, EPA and Respondent expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondent declines to perform any additional or modified tasks, EPA will have the right to undertake any Remedial Investigation or Feasibility Study work. In addition, EPA reserves the right to undertake removal actions or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondent thereafter for such costs which are incurred by the United States.

In the event that EPA executes its rights pursuant to this Section, the Respondent reserves any and all rights and defenses it may have pursuant to CERCLA/SARA and any other statutory or common law.

XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Consent Order will be the date of EPA's written approval of the RI/FS Work Plan. Respondent's time to act pursuant to this Consent Order shall begin when Respondent actually receives EPA's written approval. If said work plan is not approved by November 30, 1989, this Consent Order will become voidable at the option of either Respondent or EPA. Said option will be exercised by written notification to the other party and will be effective as of the date of that notification. In the event neither party exercises its option and a work plan has not been approved by December 15, 1989, this Consent Order shall become null and void.

In the event this Consent Order is voided or becomes void, EPA will retain any and all rights it may have to take action at this Site pursuant to CERCLA/SARA or any other statute or common

law. Such rights include the right to undertake removal or remedial actions, with the right to seek reimbursement from the Respondent thereafter for such costs which are incurred by the United States. In that event, the Respondent will retain any and all rights and defenses it may have pursuant to CERCLA/SARA and any other statute or common law.

This Consent Order, including any attachments, may be amended by mutual agreement of EPA and the Respondent. Such amendments will be in writing and will have, as the effective date, the date on which such amendments are signed by EPA.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any material non-compliance with such EPA approved plans, reports, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order.

XXI. PARTIES BOUND

This Consent Order will apply to and be binding upon the Carrier Corporation and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either Carrier or EPA, or both.

No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or in way alter Respondent's responsibilities under this Consent Order. The Respondent will remain the Respondent under this Consent Order and will be responsible for carrying out all activities required of the Respondent under this Consent Order.

The Respondent will provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order within fourteen (14) days of the effective date of this Consent Order or date of such retention, whichever is later.

XXII. NOTICE TO THE STATE

EPA has notified the State of Tennessee pursuant to the requirements of Section 106(a) of CERCLA.

XXIII. TERMINATION

The provisions of this Consent Order will be deemed fulfilled and this Consent Order will terminate upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated that all of the material terms of this Consent Order, and all subsequent modifications, have been completed.

IT IS SO AGREED:

BY: 

For Respondent Carrier Corporation
Richard F. Taylor, Jr.
Vice President & General Counsel

9/28/89

Date

IT IS SO AGREED AND ORDERED:

BY: 

Patrick M. Tobin
Director
Waste Management Division
U.S. EPA - Region IV
345 Courtland Street, NE
Atlanta, Georgia 30365

9-29-89

Date